

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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FALKEN INDUSTRIES, LTD.
and
ROY JANIS
Plaintiffs

U.S. DISTRICT COURT
DISTRICT OF MASS.

v.

Civil Action No. 04-12479 MEL

CHRISTIAN JOHANSEN
and
PATRICK SAUTIN
Defendants

PLAINTIFFS' MOTION FOR LEAVE OF COURT TO FILE A REPLY IN SUPPORT OF
THEIR OPPOSITION TO THE MOTION TO DISMISS, OR, IN THE ALTERNATIVE, TO
STAY AND COMPEL ARBITRATION AND REQUEST FOR EVIDENTIARY HEARING

Now come the Plaintiffs, Falken Industries, LTD. (hereinafter "Falken") and Roy Janis, and respectfully request this honorable Court to allow the Plaintiffs to file a Reply in Support of their Opposition to the Motion to Dismiss. In support thereof, the Plaintiffs state the following through counsel that the Defendants Reply to the Plaintiff's Opposition to the Motion to Dismiss raises some issues of first impression in the First Circuit.

Facts

The Plaintiffs filed their Complaint in the State Court for an action based on multiple breaches of contract, breaches of fiduciary duties, fraud, and other misconduct. The Defendants filed a Notice of Removal asserting diversity jurisdiction pursuant to 28 U.S.C. §1332. The Defendants also filed a Motion to Dismiss, or, in the alternative, to Stay and Compel Arbitration. The Plaintiffs timely filed an Opposition to the Motion to Dismiss. The Defendants subsequently filed a Reply in Support of the Motion to Dismiss shortly thereafter which included additional allegations and legal arguments not previously addressed in the Motion to Dismiss. The Plaintiffs are now seeking to file the

within Reply in order to respond to the additional allegations and legal arguments raised in the Defendants' Reply in Support of the Motion to Dismiss.

The Defendants, in their Reply in Support of the Motion to Dismiss assert a number of additional facts and legal arguments which the Plaintiffs feel a response is warranted. Due to the complex nature of the claims and defenses being asserted on both sides, a Reply in Support of the Opposition to the Motion to Dismiss is necessary in order for the Plaintiffs to fully state their arguments and to respond to the allegations and arguments contained in the Defendants' Reply in Support of the Motion to Dismiss.

Argument

The Plaintiffs are requesting that they be allowed to address the issues raised by the Defendants in their Reply in Support of the Motion to Dismiss. The attached Reply will not prejudice the arguments asserted by the Defendants as the Plaintiffs are merely responding to the allegations and arguments raised by the Defendants in their Reply in Support of the Motion to Dismiss. The Plaintiffs feel that a reply is necessary as the Defendants have raised additional facts and legal arguments that were not previously raised in their Motion to Dismiss which require a response.

The Plaintiffs assert that they have meritorious arguments which will be required for this honorable Court to be heard. It appears that the Defendants have asserted additional facts which they now rely upon in support of the Motion to Dismiss and have asserted additional legal arguments not previously addressed. Accordingly, the Plaintiffs are seeking leave of Court to file a Reply in Support of its Opposition to the Motion to Dismiss.

Conclusion

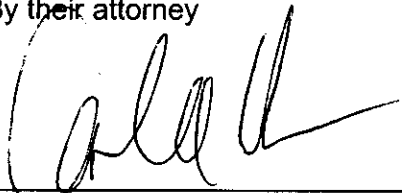
The Plaintiffs should be allowed leave of Court to file a Reply in Support of its Opposition to the Motion to Dismiss as the Defendants have asserted additional facts and new legal arguments not previously raised in their original Motion to Dismiss.

Accordingly, the Plaintiffs should be allowed an opportunity to respond to the new allegations and new arguments asserted therein for the above stated reasons.

WHEREFORE, the Plaintiffs respectfully request this honorable Court for leave of court to file a Reply in Support of the Motion for Remand for the above stated reasons.

The Plaintiffs
FALKEN INDUSTRIES, LTD.
and
ROY JANIS

By their attorney

A handwritten signature in black ink, appearing to read 'Carlo Cellai', written over a horizontal line.

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